

# Board of Education Agenda Item

Item: \_\_\_\_\_ P. \_\_\_\_\_

Date: June 22, 2005

**Topic:** Report on Status of Proposed Waivers/Amendments to Virginia's Consolidated State Application Accountability Plan Required in the *No Child Left Behind Act of 2001*

**Presenter:** Dr. Patricia I. Wright, Deputy Superintendent

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**Origin:**

\_\_\_\_\_ Topic presented for information only (no board action required)

\_\_\_\_\_ Board review required by

  x   State or federal law or regulation

\_\_\_\_\_ Board of Education regulation

\_\_\_\_\_ Other: \_\_\_\_\_

  x   Action requested at this meeting \_\_\_\_\_ Action requested at future meeting: \_\_\_\_\_ (date)

**Previous Review/Action:**

\_\_\_\_\_ No previous board review/action

  x   Previous review/action

date January 19, 2005; April 20, 2005; May 25, 2005

action Board approved proposed amendment/waiver requests

**Background Information:**

The *No Child Left Behind Act of 2001* (NCLB), which is a reauthorization of the Elementary and Secondary Education Act (ESEA), requires all state educational agencies (SEA) to submit for approval to the United States Department of Education (USED) individual program applications or a consolidated state application. A major component of the consolidated application is Virginia's Consolidated State Application Accountability Workbook that describes a single statewide accountability system for the commonwealth. The accountability workbook that describes the policies and procedures that were used to determine Adequate Yearly Progress (AYP) ratings for the 2004-2005 school year based on 2003-2004 assessments are described in the amended workbook dated May 26, 2004.

At its January 19, 2005, meeting the Virginia Board of Education adopted proposed waivers/amendments to the Consolidated State Application Accountability Plan (amended May 26, 2004) required in the *No Child Left Behind Act of 2001* (NCLB).

On January 20, 2005, President of the Board Thomas M. Jackson communicated the board's actions to the United States Department of Education (USED) and asked USED to approve the requests as specific waivers permitted in Section 9401 of the federal law. These waivers/amendments are based on two years

of implementing NCLB and identification of certain procedures in implementing AYP policies that may result in unintended consequences.

The statutory authority that permits states to request, and the U.S. Secretary of Education to approve, waivers to requirements in NCLB is found in Section 9401 of the federal law:

**“SEC. 9401. WAIVERS OF STATUTORY AND REGULATORY REQUIREMENTS.**

(a) IN GENERAL- Except as provided in subsection (c), the Secretary may waive any statutory or regulatory requirement of this Act for a State educational agency, local educational agency, Indian tribe, or school through a local educational agency, that —

- (1) receives funds under a program authorized by this Act; and
- (2) requests a waiver under subsection (b).”

On January 28, 2005, President Jackson, Superintendent of Public Instruction Jo Lynne DeMary, and Deputy Superintendent Patricia Wright met with Assistant Secretary of Education Ray Simon and the new Secretary of Education’s Chief of Staff David Dunn to discuss Virginia’s waiver requests. During that meeting, USED officials described Virginia’s requests in one of three categories: policy, regulatory, or statute.

On February 1, 2005, USED sent a letter to President Jackson indicating the “graduation rate” amendment to be acceptable and the “new minimum n” amendment to be acceptable with modifications. Both of these requests were considered USED policy interpretations and did not require a waiver of regulation or statute. The letter stated USED would get back with Virginia on the remaining amendment/waiver requests as soon as they reach a decision on their acceptability.

On April 4, 2005, USED issued a letter to President Jackson rejecting Virginia’s request for a waiver on annually testing the reading and writing skills of limited English proficient (LEP) students in kindergarten and first grade.

On April 7, 2005, Secretary of Education Margaret Spellings promised additional flexibility for states that adhere to what she described as the four key principles of the law:

- Ensuring students are learning
- Making the school system accountable
- Ensuring information is accessible and parents have options
- Improving teacher quality

At its April 20, 2005, meeting the Board of Education affirmed a position stated in the accountability workbook and approved the use of separate starting points and annual measurable objectives in each subgroup (i.e., reporting category) based on actual student performance as a proposed growth model in determining Adequate Yearly Progress for schools, divisions, and the state. On April 28, 2005, President Jackson communicated to USED this additional waiver/amendment requesting the use of separate starting points and annual measurable objectives in each subgroup in determining AYP.

On May 10, 2005, Secretary Spellings announced a process for seeking approval of additional flexibility for making AYP determinations for the students with disabilities subgroup based on 2004-2005

assessments. States must apply and be approved for this flexibility.

On May 19, 2005, USED faxed to the Department of Education a letter dated February 2, 2005, granting approval of Virginia's request to revise the state reservation for Immigrant Children and Youth Funding under Title III: Language Instruction for Limited English Proficient and Immigrant Students from 15 percent to 5 percent.

At its May 25, 2005, meeting the Board of Education approved seeking authorization from USED to (a) take advantage of additional flexibility being provided by USED in calculating Adequate Yearly Progress (AYP) for students with disabilities, and if determined eligible by USED, develop modified achievement standards in accordance with federal requirements and (b) extend the previously approved 1.13 percent exception to the 1 percent cap to AYP ratings for 2005-2006 based on 2004-2005 assessments. The request with supporting documentation was submitted to USED on June 1, 2005.

#### **Summary of Major Elements:**

On June 13, 2005, the Deputy Assistant Secretary for Policy in the U.S. Department of Education notified the Virginia Department of Education that a decision had been made on Virginia's remaining amendment/waiver requests. Attached is the summary document that USED sent the department in an e-mail message of June 13. An official letter of response will follow.

The response described Virginia's amendments using five categories. The name of the categories and the number of amendments in each category are as follows: acceptable amendments through exceptional flexibility (1), acceptable amendments (1), acceptable amendments with modifications (2), deferred amendments (2), and unacceptable amendments (4).

As a reminder, earlier this spring USED responded to Virginia's two amendments to the NCLB Consolidated State Application. USED rejected Virginia's request for a waiver on annually testing the reading and writing skills of limited English proficient (LEP) students in kindergarten and first grade. USED approved Virginia's request to revise the state reservation for Immigrant Children and Youth Funding under Title III: Language Instruction for Limited English Proficient and Immigrant Students from 15 percent to 5 percent.

Since USED has deferred a decision on establishing separate annual measurable objectives for each subgroup, the Department of Education recommends that the board submit to USED a revised set of annual measurable objectives (AMOs) for calculating Adequate Yearly Progress ratings in reading and mathematics for 2005-2006 based on 2004-2005 assessments. As the results of newly developed and administered tests are used in determining Adequate Yearly Progress and accountability decisions for the state, divisions, and schools, the board should annually review and adjust, if necessary, its AMOs in reading and mathematics based on data analysis.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends the Board of Education adopt the attached revised annual measurable objectives (AMOs) for determining Adequate Yearly Progress ratings in reading and mathematics for 2005-2006 based on 2004-2005 assessments. Beginning in 2005-2006, as the results of newly developed and administered tests are used in determining Adequate Yearly Progress and accountability decisions for the state, divisions, and schools, the board will review and adjust annually, if necessary, its AMOs in reading and mathematics based on data analysis.

**Impact on Resources:** The Virginia Department of Education is working with a consortium of the Council of Chief State School Officers (CCSSO) to identify the cost of implementing NCLB.

**Timetable for Further Review/Action:** The Department of Education will send USED an amended accountability workbook and implement the approved amendments/waivers in determining AYP and accountability determinations based on the 2004-2005 test administration. In addition, the department will send USED any additional requests that are approved by the board.

**U.S. Department of Education Response to Virginia Amendment/Waiver Requests  
June 13, 2005**

**ACCEPTABLE AMENDMENTS THROUGH EXCEPTIONAL FLEXIBILITY**

**Counting the best test score (Element 3.2)**

Revision: Virginia requests to count in AYP determinations the test results from “expedited tests,” a re-test given to students who miss the first test administration or fail it within a specified, narrow margin.

**ACCEPTABLE AMENDMENTS**

**Stratified graduation rate for Individualized Education Plan (IEP) and limited English Proficient (LEP) students (Element 7.1)**

Revision: Virginia requests for students with disabilities, to allow a student’s IEP to determine the standard numbers of years for graduation rate; for LEP students the LEP team would determine the standard number of years.

**ACCEPTABLE AMENDMENTS WITH MODIFICATIONS**

**Minimum subgroup size (Elements 5.5 and 10.2)**

Revision: Virginia requests a new minimum “n” for division and state level only (50 or 1 percent). (this is only acceptable if it is also applied at the school level and is capped at 200)

**Division (LEA) accountability (Element 1.6)**

Revision: Virginia proposes to identify divisions as in need of improvement if they miss AYP for two consecutive years in the same subject by the same subgroup and across all grade spans. (this is only acceptable if the reference to same subgroup is removed).

**DEFERRED AMENDMENTS**

**Limited English Proficient (LEP) flexibility (Element 5.4)**

Revision: Virginia requests to extend the assessment and inclusion flexibility for newly arrived LEP students to LEP students who have been in the US from 1 to 3 years. (deferred until LEP working group provides recommendation(s))

**Separate Starting Points (Element 3.2) (submitted 4/28/05)**

Revision: Virginia requests to establish individual starting points and annual measurable objectives for each subgroup as a way of implementing a growth model for determining AYP of schools, divisions. The starting points and annual measurable objectives in each reporting category will be based on actual student performance in each category for the prior three years. (deferred until growth model working group provides recommendations)

## **UNACCEPTABLE AMENDMENTS**

### **Identification based on same subject-same subgroup (Element 1.6)**

Revision: Virginia requests to base school and district identification on the same subgroup missing AYP for two consecutive years in the same subject.

### **Targeting Choice and supplemental educational services (SES) (Elements 1.6 and 4.1)**

Revision: Virginia proposes to limit choice and SES only to students in the subgroups that miss AYP.

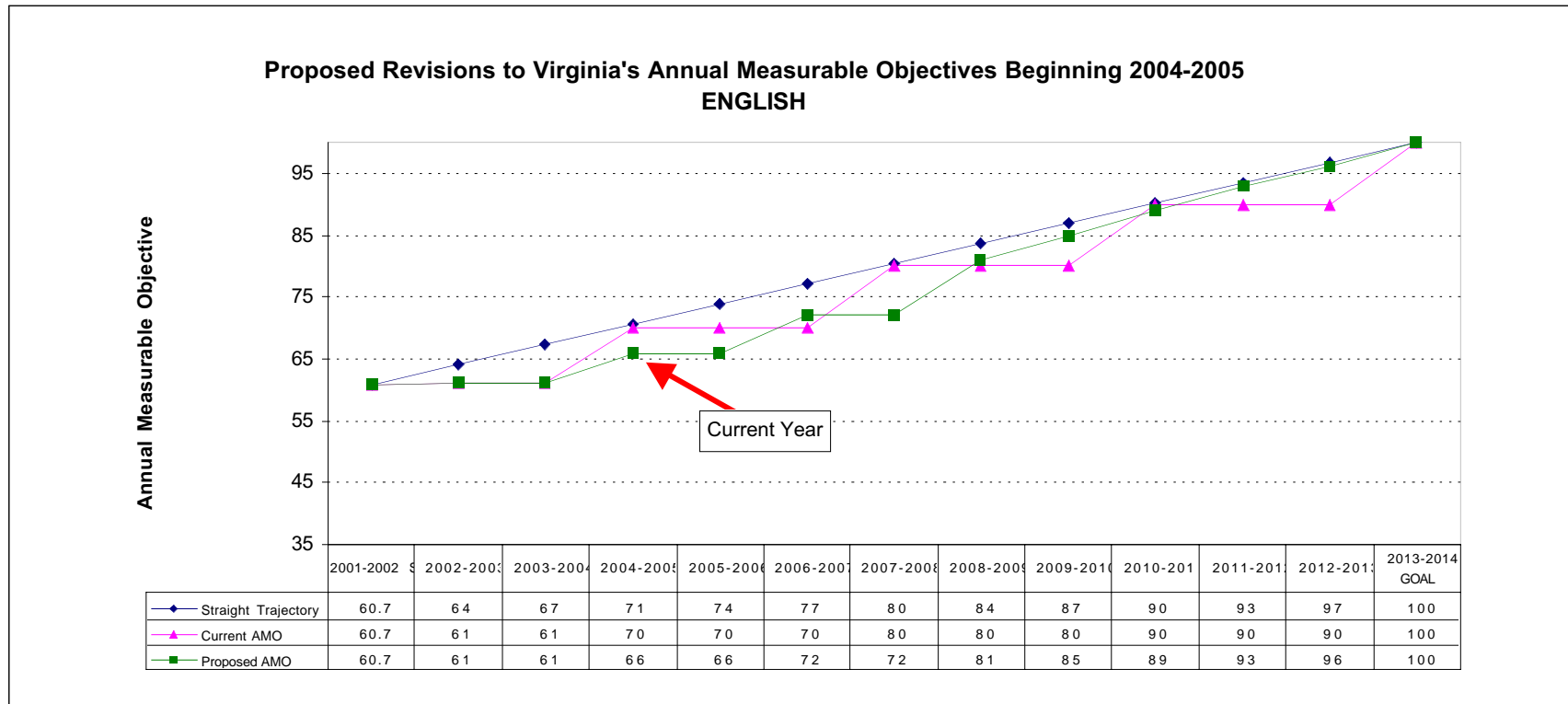
### **Use of other academic indicator (Elements 3.2, 6.1, and 8.1)**

Revision: Virginia requests to use additional indicators for safe harbor only (grad rate, science SOL or attendance).

### **Assessment of SWD (Element 5.3)**

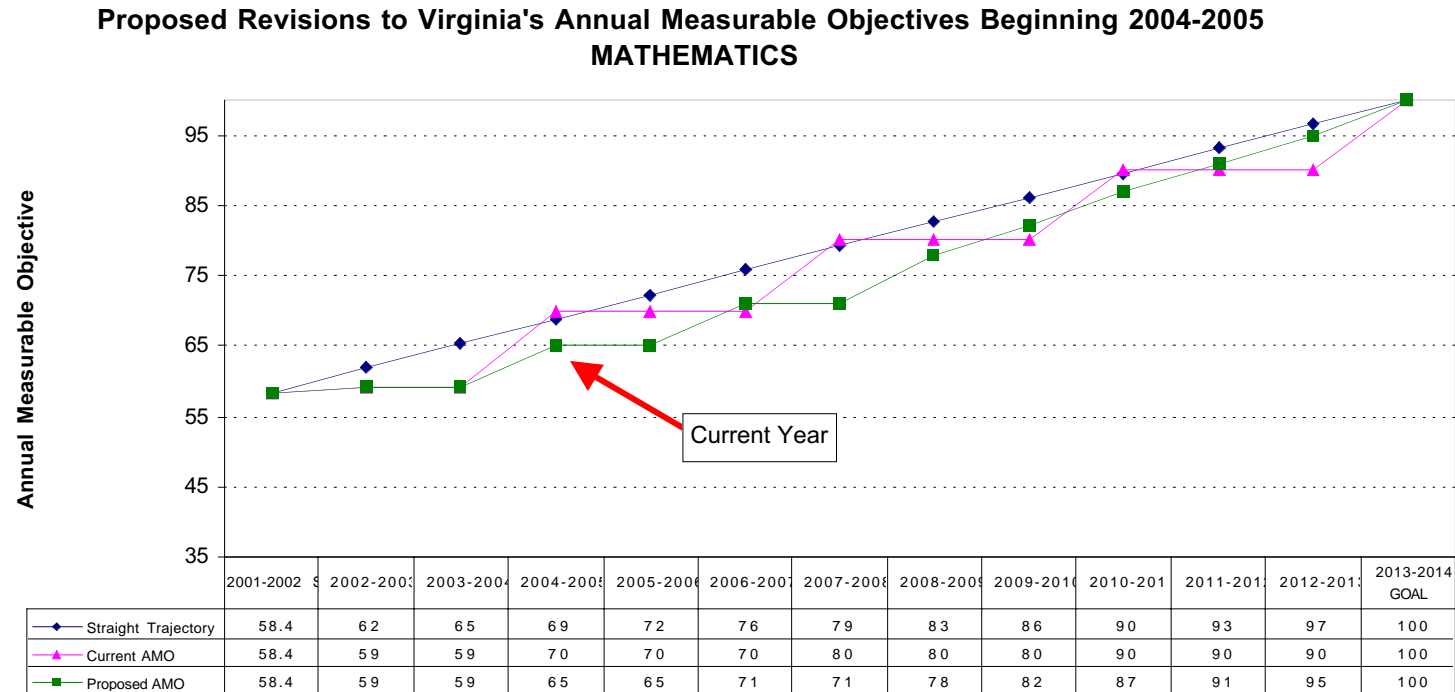
Revision: Virginia requests to count as proficient for accountability purposes achievement levels set by IEP teams for students 1 to 3 years below grade-level. (this issue is addressed via VA's 2% request and request for an exception to the 1% cap for the amount of 1.13%)

Proposed Amendment to Virginia's Consolidated State Application Accountability Workbook Required in NCLB  
June 22, 2005



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